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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 COMPASS, INC. AND COMPASS
WASHINGTON, LLC

11 Plaintiffs,

12 v.

13 NORTHWEST MULTIPLE LISTING
14 SERVICE,

15 Defendant.

Case No. 2:25-cv-00766

DEFENDANT NWMLS'S REPLY IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER TO STAY
DISCOVERY

16 In an attempt to circumvent Defendant Northwest Multiple Listing Service's ("NWMLS")
17 motion for a protective order to stay discovery, Plaintiffs Compass, Inc. and Compass Washington,
18 LLC (collectively "Compass") incorrectly suggests that a different standard applies. The parties'
19 joint status report reflecting NWMLS's position on staying discovery was not a motion, just as the
20 Court's entry of a case schedule was not a ruling on a motion to stay. Thus, Compass' argument
21 that NWMLS's motion should be deemed one for reconsideration defies logic as well as
22 credibility, and is inconsistent with the Rules of Civil Procedure and the Local Civil Rules.
23 Compass also fails to acknowledge the scope of its antitrust claims or the overly burdensome
24 discovery it propounded. Compass likewise fails to show that it would suffer any prejudice if a
25 stay is granted.
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REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY - 1

1 NWMLS has not asked for any change to the case schedule, just a temporary pause on
2 discovery until the Court rules on the pending motion to dismiss. Briefing on the motion to dismiss
3 will be closed on July 28, 2025—a mere four days after the completion of briefing on NWMLS’s
4 motion to stay. It is in the interests of the parties, and, of course, third parties and the Court, to
5 ensure that discovery is not forced to proceed on issues that may be dismissed shortly pursuant to
6 that dispositive motion to dismiss. A stay should be granted.

7 NWMLS meets its burden on each of the factors considered in determining whether to stay
8 discovery while a Rule 12(b) motion is pending: “(1) whether the pending motion could dispose
9 of the entire case; (2) whether the motion could be decided without additional discovery; (3) the
10 possible damage which may result from the granting of stay; (4) the hardship or inequity which a
11 party may suffer in being required to go forward; and (5) the orderly course of justice measured in
12 terms of the simplifying or complicating of issues, proof, and questions of law which could be
13 expected to result from a stay.” *Subspace Omega, LLC v. Amazon Web Services, Inc.*, Case No.
14 2:23-cv-01772-TL, 2024 WL 4451404, at *1 (W.D. Wash. Oct. 9, 2024) (internal quotations
15 omitted) (citing *HUB International Northwest LLC v. Larson*, Case No. 2:22-cv-01418-TL. 2023
16 WL 2527150, at *3 (W.D. Wash. Mar. 15, 2023)).

17 As set forth in NWMLS’s motion, each factor is met here: NWMLS’s pending motion to
18 dismiss, if granted, would be dispositive. As Compass itself admits, no discovery is necessary to
19 resolve the motion to dismiss. NWMLS will be harmed if discovery is not stayed, not least from
20 the recognized costs of discovery in antitrust cases and the sheer breadth of Compass’ initial
21 discovery requests to NWMLS, but also because such discovery is likely in vain as Compass’
22 claims are subject to dismissal. A stay is in the interest of justice because the Court’s ruling on
23 NWMLS’s pending motion to dismiss will simplify the issues, proof, and questions of law at issue
24 in this action. *See generally* Dkt. 29. Clearly, good cause exists to stay discovery pending the
25 Court’s ruling on NWMLS’s motion to dismiss.

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REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY - 2

1 Compass' opposition is misplaced. As a threshold matter, Compass' attempt to characterize
2 NWMLS's motion to stay as a motion for reconsideration (Dkt. 34 at 1), is nonsensical. Compass
3 asks the Court to deem NWMLS's position statement on commencement of discovery in the
4 parties' Joint Status Report and Discovery Plan as a motion to stay discovery. It was not. Compass
5 also asks the Court to deem its Order Setting Trial Date and Related Dates a ruling on a motion,
6 subject to reconsideration pursuant to LCR 7(h). It was not. Compass' attempt to contort the Rules
7 of Civil Procedure to try to leverage the standard for reconsideration is baseless, disingenuous, and
8 should be rejected.

9 Compass' argument that NWMLS must establish that its motion to dismiss is certain to be
10 granted fares no better. *See* Dkt. 34 at 4. Under the standard governing requests to stay discovery
11 pending the ruling on a motion to dismiss in antitrust actions, NWMLS need not demonstrate that
12 its motion to dismiss *will* be granted in its entirety, as argued by Compass, only that it is not
13 frivolous and *could* dispose of the entire case. *See Subspace Omega*, 2024 WL 4451404, at *2
14 (emphasis added) ("Without commenting on the merits of Defendant's pending motion, the Court
15 notes that *the motion is not frivolous* and *could* dispose of the entire case, as Defendant seeks
16 dismissal of all of Plaintiff's claims."). Furthermore, the core of the Court's inquiry rests on the
17 undue burden imposed by broad and costly antitrust discovery (as Compass seeks to impose on
18 NWMLS) while a motion that could either dispose of the entire case or simplify the issues remains
19 pending. *See id.* (collecting cases) (noting the prohibitive cost of discovery in antitrust actions and
20 that "even if the motion does not result in complete dismissal of all claims, the issues are more
21 likely to be simplified than complicated, and the Parties will have a greater understanding of the
22 claims as they engage in discovery."). NWMLS's pending motion to dismiss is not frivolous and
23 will be dispositive if granted in its entirety. Moreover, Compass has already served an incredibly
24 broad set of 51 separate requests for production, many of which request "All Documents" and
25 emails concerning a wide array of different subjects—such as "All Documents and data concerning
26 projected, estimated, planned or actual conditions in the markets for residential real estate and Real

REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY - 3

1 Estate Services” without any geographic limitation. *See* Dkt. 30, Ex. B. At a minimum, the Court’s
2 ruling on the motion will focus any remaining issues and reduce the burden of discovery going
3 forward.

4 Similarly, Compass’ contentions that NWMLS’s motion to dismiss is not the type that
5 would qualify for a stay and that the cost of discovery is insufficient to merit a stay of discovery
6 (Dkt. 34 at 4–6), blatantly ignore the caselaw cited in NWMLS’s motion to stay—which
7 specifically concerns a stay of discovery during the pendency of a Rule 12(b)(6) motion in an
8 antitrust case due to the cost of discovery in such actions. *See e.g., Subspace Omega*, 2024 WL
9 4451404, at *1–2 (articulating “factors relevant to whether a stay of discovery is appropriate while
10 a Rule 12(b)(6) motion is pending [in an antitrust case]” and granting motion to stay). Tellingly,
11 the court in *Subspace* specifically highlighted the “prohibitive” cost of discovery in antitrust cases
12 as a key basis for its decision to stay discovery pending a ruling on the potentially dispositive
13 motion. *See id.* at 2 (alterations in original, quoting *Rutman Wine Co. v. E. & J. Gallo Winery*, 829
14 F.2d 729, 738 (9th Cir. 1987) (“On the other hand, ‘[i]n antitrust cases [a stay of discovery pending
15 a Rule 12(b)(6) motion] especially makes sense because the costs of discovery in such actions are
16 prohibitive.”)). The same rings true here, as NWMLS merely seeks entry of a protective order
17 staying discovery until the Court rules on its pending motion to dismiss and the parties know which
18 claims, if any, will actually be subject to discovery.

19 Finally, Compass’ arguments as to a delay in resolution of this case ring hollow and
20 misconstrue NWMLS’s position. *See* Dkt. 34 at 5–6. Put simply, NWMLS’s motion does not ask
21 the Court to stay this case in its entirety or to amend the deadline set forth in its scheduling order.
22 Rather, it seeks an interim, temporary stay of discovery while the Court considers NWMLS’s
23 motion to dismiss so that discovery, if necessary, can be tailored to the remaining issues. Compass’
24 claims that it and non-parties (who are neither parties to the litigation nor represented by Compass)
25 will be harmed if Compass is not allowed to engage in facially overbroad discovery while a
26 dispositive motion to dismiss remains pending are vague, unquantified, and undercut by Compass’

REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY - 4

1 decision to not seek injunctive relief in this action. *See generally* Dkt. 1. The reality is that
 2 NWMLS's motion to dismiss will be fully briefed and ripe for consideration in short order, and
 3 the Court's ruling on the motion will allow the parties to direct their efforts to those claims that
 4 remain, if any.

5 I. CONCLUSION

6 Good cause exists to stay discovery pending resolution of NWMLS's motion to dismiss.

7 *I certify that this memorandum contains 1,376 words, in compliance with the Local Civil*
 8 *Rules.*

9 DATED: July 24, 2025

STOEL RIVES LLP

11 *s/ Vanessa Soriano Power*

12 Vanessa Soriano Power, WSBA No. 30777

13 Christopher R. Osborn, WSBA No. 13608

14 Harrison L.E. Owens, WSBA No. 51577

600 University Street, Suite 3600

Seattle, WA 98101

Telephone: (206) 624-0900

Facsimile: (206) 386-7500

Email: vanessa.power@stoel.com

Email: chris.osborn@stoel.com

Email: harrison.owens@stoel.com

17 Claude Szyfer (*pro hac vice*)

18 Hogan Lovells US LLP

390 Madison Avenue

19 New York, NY 10017

Telephone: 212-918-3000

Email: claudeszyfer@hoganlovells.com

21 Liam Phibbs (*pro hac vice*)

22 Hogan Lovells US LLP

Columbia Square

555 Thirteenth St. NW

23 Washington, DC 20004-1109

Telephone: 202-637-5600

Email: liam.phibbs@hoganlovells.com

25 *Attorneys for Defendant*

26 *Northwest Multiple Listing Service*